

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.606 of 2016

1.Shri.Ambika

2.Mrs. Sughari

Parents of deceased Bharat Kumar

.. Appellants /Appellants

-vs-

The Union of India owning
Southern Railway represented by
its General Manager,
Chennai 600 003.

.. Respondent/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 praying to set aside the order dated 16.12.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 170/2014 and grant an award for the statutory compensation of Rs.4,00,000/- with interest at 12% per annum from the date of filing of the claim application viz., 27.6.2014 till the date of payment and costs.

For Petitioner : Mr.T.Raja Mohan

For respondents : Mr.M.Vijay Anand
Addl. Standing Counsel for R2

JUDGMENT

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This Civil Miscellaneous Appeal is filed by the appellants praying to set aside the order dated 16.12.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 170/2014 and grant an award for the statutory compensation of Rs.4,00,000/- with interest at 12% per annum from the date of filing of the claim application viz., 27.6.2014 till the date of payment.

2. The facts are as follows;

(i) The claimants filed a claim petition for the death of their son Bharath Kumar in an untoward incident, while he was travelling in a train.

(ii) The deceased was a native of Isauta Village of Allahabad District in UP State. He was working at Salem with a private construction contractor. On 25.2.2014, over phone, the deceased informed the claimants that he was leaving Salem by train to Chennai to catch the train for his onward journey to his native place. He purchased second class ticket bearing No.07873 dated 25.2.2014 to travel from Ayodhyapattanam to Chennai, Egmore.

(iii) The deceased while travelling in the general compartment of the train, due to heavy jerk and jolt, prior to 6.30 hours on 26.2.2014, accidentally fell down from the train between Paranur and Singaperumal Koil Railway Stations and suffered grievous injuries and succumbed to the same. Therefore on the basis of the untoward incident, the claimants being the parent of the deceased claimed compensation to the tune of Rs.4,00,000/- with interest at the rate of 9% per annum.

(iv) In order to prove their case, the first claimant, father of the deceased examined himself as AW1 and marked exhibits Ex.A.1 to A4.

(v) On the side of the respondents, Police Constable, Railway Protection Force and Halt Agent/Booking clerk who issued the ticket were examined as RW1 and RW2 respectively and original diary of constable was marked as Ex.R.1.

3. Relying several documents attached to the DRM's report, the tribunal came to a conclusion that the journey ticket submitted by the claimants were tampered and that the claimants have failed to prove that the deceased was a bonafide passenger and that he suffered death in an untoward incident and rejected the claim.

4. Aggrieved over the same, the claimants as appellants have preferred the above appeal.

5. I have heard Mr.T.Rajamohan, learned counsel for the appellant and Mr.M.Vijay Anand, Additional Standing Counsel appearing for 2nd respondent and perused the materials made available on record before this Court.

6. On perusal of the evidence of AW1, who is the father of the deceased, it is seen that the deceased informed his parents about his journey from Salem to Chennai by train. The

claimants have also marked the FIR, inquest report and final report to substantiate the case.

7. The final report issued by the Inspector of police, Railway Police Station, Chengleput mentions about the ticket number 07873 and that the deceased travelled in an unreserved compartment of train No.11064 and fell down from the train due to heavy rush and suffered death. Ex.A.4 ticket marked by the claimants shows the date of issuance as 25.2.2014 embossed on the back of the ticket.

8. The reply statement filed by the Railways shows that there was no such accident on that particular date. Had it been happened, the co-passengers would have stopped the train by pulling chain and that no report was received from anybody and that no ticket was recovered from the body of the deceased and therefore the accident will not fall under the definition 'untoward incident' and that the deceased was not a bonafide passenger.

9. The DRM report was not filed along with the written statement. The date of filing of the reply statement was 10.09.2014 which does not contain the details which were found in DRM report and the DRM report must have been filed after 29.9.2014. But as per Rule 13 of the Railway Passengers (Manner of Investigation of Untoward Incident) Rule 2003, the DRM report shall be filed along with the written statement. As stated above, the DRM report was filed on a subsequent date. The contents of the DRM report does not find place in the reply statement filed on a prior date.

10. The tribunal relying on the DRM report found that the ticket was issued only on 7.3.2014, but not on 25.2.2014 which is the date of alleged journey undertaken by the deceased. The tribunal formed an opinion that there was some manipulation in the production of ticket. To get it clarified, called for an expert opinion by its order dated 13.7.2015 and referred the issue to the Forensic Department of Government of Tamilnadu, who after scrutinizing the concerned material, has given a finding as follows;

"In the present red closed serial number 07823 stamped and marked Q, the serial number '2' in the second digit has been made by altering the previous serial number '7'."

11. Therefore on the basis of evidence of RW1 and RW2, the Tribunal held that the claimants have not proved their case and therefore rejected the claim and further directed to enquire into the manipulation made by Railway Officials through vigilance enquiry. Aggrieved over the same, the claimants as appellants have preferred the present appeal.

12. On perusal of the claim application, a clear statement was made that the deceased informed his parents that he would travel by train from Salem to Chennai. Thereafter from the final report which is marked as document on the side of the claimants reveals that the deceased traveled in the train after purchasing a ticket bearing No. 07873 in a General Compartment of train No.11064. It is not disputed by both sides that the deceased fell down from the train and suffered death.

13. The main issue to be decided is that whether the ticket is a valid ticket or bogus one and whether the deceased can be construed as a bonafide passenger of the train.

14. The tribunal relied on the evidence of RW1 who is a Police Constable. RW1 would state in his chief examination that no ticket was available from the body of the deceased, but it was contradicted by cross examination of RW1 who would state that he did not know who investigated the case and that he did not know as to whether a recovery was made even before his arrival. In his chief examination, he has stated that he was informed about the incident by Security Control and he visited the spot at 7.00 hours, but later on, in his re-examination, he would state that he travelled from Perungalathur to Paranur watching for any incident enroute and after seeing that untoward incident, he got down from the train and attended the same.

15. The contradictions would go to show that RW1's evidence is not reliable as he is not aware of the recovery and that his statement is based on hearsay. The statement in his chief examination that '...I was told that no ticket was recovered from the body...' is by itself would show that it is a hearsay and he has no personal knowledge about recovery.

16. Insofar as the evidence of RW2 is concerned, he is a Booking Clerk/Halt Agent who issued the ticket. In his chief examination, he would categorically state that he was working as a halt agent of Ayodhyapattinam for the past six years. He would further state that the ticket (Ex.A.4) shown to him had been issued by him and he was not able to confirm the ticket number, but affirm that the date mentioned on the backside of the ticket is 25.2.2014. Further, during his cross examination, he would state that he used to give ticket affixing the date on the back side.

17. From the above, it is very clear that RW2 is the person who issued the ticket which is marked as Ex.A4 and that he affixed the date on the back of the ticket. In that event, it is very clear that there is some probability that halt agent

issuing old ticket embossing a later date and the deceased would have travelled in the train using the ticket marked as Ex.A.4 on 25.2.2014.

18. The further statement of RW2 that the ticket number with last two digits 73 number was not issued on 25.2.2015 and it was issued on 7.3.2014 are the matters to be proved by the Railways.

19. However, there is no further evidence in support of the case of the Railways by anybody else. There is no pleadings as to the manipulation of tickets and issuance of ticket in the reply statement. Even though DRM report dated 21.9.2014 is marked, the same was not spoken by any of the witnesses and no opportunity was given to the claimants to contradict the same. Therefore the report of the DRM cannot be relied on as it does not carry any evidentiary value.

20. The tribunal on its own, referred the ticket for Forensic Examination and found that there is some manipulation in number of the ticket. Even if that is taken into account, there shall be some evidence by a competent witnesses as to the manipulation and validity of the ticket.

21 Even though RW2 Halt Agent who issued the ticket was examined does not prove that the claimants have manipulated the ticket and planted it for the purpose of getting compensation. The final report itself mentions the number of ticket. The claimants are residents of Uttarpradesh and they came down to Chennai on hearing the death of their son and filed the claim petition based on documents issued by Railway Police. In that event, there is no opportunity for them to manipulate the ticket. Even assuming that it is manipulated, it shall be the result of the investigation conducted by the police. Railways have failed to avail an opportunity of proving that the ticket produced by the investigation officer is not a valid ticket by calling the appropriate persons to let in evidence.

22. In such circumstances, this court is of the considered opinion that the claimants have discharged their initial onus that the deceased travelled by train from Ayodhapattinam to Chennai by taking second Class Travel ticket and travelled in Train No.11064 in unreserved compartment and fell down from the train due to heavy rush and suffered death.

23. Once the initial onus is discharged, the Railways should have disproved the claim by adducing evidence on the basis of investigation done by it, but the respondent railways have failed to prove the same in proper manner. The Railway Claims Tribunal, on its own interest has probed into the matter,

which it is not supposed to do. The tribunal cannot step into the shoes of Railways and try to find reasons to reject the claim and as such over enthusiastic acts are uncalled for.

24. Therefore, the order passed by the tribunal in Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 170/2014 is set aside and a direction is issued to the Railways to pay compensation to the claimants.

25. The accident had taken place on 26.2.2014. On the date of accident, compensation for fatal incident was Rs.4,00,000/- with interest. Ministry of Railways issued a notification dated 22.12.2016, the compensation has been enhanced to Rs.8,00,000/- with interest. In similar circumstances, the Honourable Supreme Court laid down the procedure for calculating the quantum of compensation.

25. The Honourable Supreme Court in its judgment in the case of Union of India Vs. Radha Yadav in Civil Appeal Nos.1265 - 1266 of 2019 held as follows;

'10. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi is very clear. What this court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there by any difference between the amount so calculated and the amount prescribed in the schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in

excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.'

26. The Appellant is directed to deposit the appropriate compensation amount before the tribunal to the credit of O.A. (II-U).170 fo 2014 in terms of the order of the Honourable Supreme Court mentioned above, whichever is higher, within a period of six weeks from the date of receipt of a copy of this order along with appropriate interest from the date of order passed by the Railway Claims Tribunal till realisation. On deposit of the compensation, the claimants are entitled to withdraw the same as per the apportionment made by the Tribunal on production of proper identification.

27. In fine, the Civil Miscellaneous Appeal is allowed with the above direction. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Railway Claims Tribunal, Chennai

+2cc to Mr.T.Raja Mohan, Advocate sr.23396
+1cc to Mr.M.Vijay Anand, Advocate sr.23425

C.M.A.No.606 of 2016

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